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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,694	11/17/2003	Lowell R. Wedemeyer	CheekAir	5398
41360	7590	01/04/2010		
LOWELL R. WEDEMEYER 719 YARMOUTH ROAD, SUITE 204 PALOS VERDES ESTATES, CA 90274			EXAMINER JACKSON, BRANDON LEE	
			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/714,694	Applicant(s) WEDEMEYER, LOWELL R.	
	Examiner BRANDON JACKSON	Art Unit 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 9/25/2009 have been fully considered but they are not persuasive. Applicant argues that the Examiner disregarded Applicant's closed positive limitation of "sized to fit within one of a user's cheek pouches." However, Applicant has used no closed language that would limit the device fit in **only** one cheek pouch. Moreover, the Cameron device is sized to fit in only one cheek pouch because it is sized to fit between the user's teeth on one side of the user's mouth and fit in the corresponding cheek pouch.

Applicant argues the Cameron device is not perform the identical function as Applicant's claimed invention because it is not compressible by the soft tissue of the mouth. However, this distinction is merely a choice of use of the device by the user, not a structural distinction between the devices. The Cameron device is structurally equivalent to the Applicant's claims and therefore anticipated the claims. In addition, there is no indication that the Cameron device cannot be compressed by the soft tissue of the user's mouth, and that is not actually claimed.

Applicant argues the combination of Cameron and Rodriguez do not show obviousness because they do not disclose how the device would fit wholly in one cheek pouch, how the device would function without anchoring the spring arms between the patient's teeth, and how to attach the Rodriguez device to the Cameron device. The Cameron/Rodriguez device would fit in one cheek pouch because the Cameron device fits in one cheek pouch and the Rodriguez conduit only needs to be inserted within the

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mouth from one side, not both. The Cameron/Rodriquez device does not need the spring arms to not be anchored between the teeth in order to read on the present claims. Lastly, it is well known in the art that the suction conduit is placed in the mouth during dental procedures and it is fully capable that it can rest upon the support or through the hole in the coil spring. It would require mere routine skill in the art to determine placement of the suction conduit during use with the Cameron device during a dental procedure.

Applicant argues the combination of Cameron and Seyler does not show obviousness for the same first two reasons as Rodriquez above and because the varying of the size of the Seyler coils is done for a different function than Applicant's claimed invention. However, this distinction does not change that the Cameron/Seyler device reads on claims 36 and 39 because the Cameron/Seyler device teaches varying the size of the coils to change the force applied by the device. This is not the same reason as Applicant's for changing the size of the coils, but it accomplishes the same result of changing the size of the coil, which would inherently vary the span of the device. The modification of Cameron by Seyler does not have to be done for the same reasons as Applicant's features in order to read on the claimed invention.

Applicant argues the combination of Cameron and Diaz does not show obviousness because they do not teach how the device will fit in one cheek pouch and because Diaz does not teach how to make the Cameron device function without anchoring the spring arms between the user's teeth. However, the Cameron device does fit in one cheek pouch and Diaz merely teaches the use of medicament on the

Cameron device. Moreover, the Cameron device does not need to not be anchored between the user's teeth in order to read on Applicant's claims.

Applicant argues that claim 37 is not indefinite. However, the claim is indefinite because of the term improved. Improved has been given no special definition by Applicant and it is a subjective term that is subject to each person's own definition of improved. Therefore, it is indefinite.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 37 and 44 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim fails to set forth any additional structure. Moreover, Applicant uses the term "improved," but fails to specify what is improved and how it is improved.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 33-34, 40-41, 43 and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Cameron (US Patent 1,389,436). Cameron discloses a cheek pouch anchor (fig. 1) comprising a coil spring (6) to be placed within a user's cheek pouch (Lines 61-66) that compresses as the user's jaw closes and expand as the jaw opens because the anchor (fig. 1) is a resilient coil spring (6). The anchor (fig. 1) maintains a span across the user's inter occlusal space and a user's lip opening as the user's jaws and lips open and close (p. 1, lines 97-105). The anchor has sufficient structural strength to receive a work piece (p. 1, lines 75-83). The anchor (fig. 1) is capable of carrying a substance that can be released in to the mouth of the user because it is fully capable of being coated in a flavoring, antiseptic, antibacterial, or any other coating deemed necessary by the physician. That coating would inherently be released in the mouth upon insertion of the anchor (fig. 1) into the oral cavity. The coil spring (6) is of Nickel, which is a metal (p. 2, lines 30-35). The adapted to language used in claim 1 does not further limit the particular structure claimed. It merely list steps the device should optionally be able to perform. See MPEP 2111.04 [R-3]. The Cameron device is capable of being placed within a user's cheek pouch, compressing when the user's jaw closes, resiliently expanding to form a bridge spanning across a user's inter occlusal space and a user's lip opening formed as a user's jaws and lips open and close, receiving joinder to a work piece, and having enough structural strength when joined with a work piece to maintain placement within a user's cheek pouch while a user's lips and jaws open and close.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 35 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cameron (US Patent 1,389,436) in view of Rodriguez (US Patent 6,428,316). Cameron substantially discloses the claimed invention; see rejection to claims 33 and 41 above. Cameron fails to disclose the fluid conduit joined to the anchor. However, Rodriguez teaches a fluid conduit (17) that can be coupled to an anchor (fig. 1) by inserting it through the center of the coil spring (6), and used during dental procedures. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Cameron device with the fluid conduit, as taught by Rodriguez, in order to remove excess saliva or other fluids from the user's mouth during procedures.

Claims 36, 39 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cameron (US Patent 1,389,436) in view of Seyler (US Patent 4,889,327).

Cameron substantially discloses the claimed invention; see rejection to claim 33 above. Cameron fails to explicitly state the coil spring (6) comprises a plurality of loops or merely one. However, it is well known in the art that coil springs can vary the number of loops in order to vary the force applied by the spring. Moreover, Seyler teaches a spring (30) comprising a plurality of loops (31). Therefore, it would be obvious to one of ordinary skill in the art at the time of the invention to modify the Cameron device to have a plurality of loops, as taught by Seyler, in order to vary the force applied by the device for specific users because the increased number of loops would increase the strength of the spring by distributing the force over more springs. The spring element Cameron/Seyler device has a span size and the span size is adjustable such that when the span size of one of the loops is increased or decreased, it increases or decreases the span size of an adjacent loop; thereby enabling adjustment of the whole spring element span size. This adjustment means occurs because the anchor is made of one continuous piece of material.

Claims 37-38 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cameron (US Patent 1,389,436) in view of Diaz (US Patent 4,041,937). Cameron substantially discloses the claimed invention; see rejection to claim 33 above. Cameron fails to disclose an impregnation or a coating on the spring element to be released in the mouth of the user. However, Diaz teaches antiseptic coatings (col. 1, lines 48-61) disposed upon medical device. Therefore, it would have been obvious to one of

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ordinary skill in the art at the time of the invention to modify the Cameron device with the antiseptic coating, as taught by Diaz, in order to sanitize the device provide a pleasant taste in the user's mouth. The adapted to language used in claim 1 does not further limit the particular structure claimed. It merely list steps the device should optionally be able to perform. See MPEP 2111.04 [R-3]. The Cameron/Diaz device is capable of being placed within a user's cheek pouch, compressing when the user's jaw closes, resiliently expanding to form a bridge spanning across a user's inter occlusal space and a user's lip opening formed as a user's jaws and lips open and close, receiving joinder to a work piece, and having enough structural strength when joined with a work piece to maintain placement within a user's cheek pouch while a user's lips and jaws open and close.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANDON JACKSON whose telephone number is (571)272-3414. The examiner can normally be reached on Monday - Friday 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571)272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brandon Jackson/
Examiner, Art Unit 3772

/BLJ/

/Michael Brown/
Primary Examiner, Art Unit 3772